

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)UNIT 5201, FORTUNE FINANCIAL CENTER
5 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT, BEIJING 100020, CHINA
TELEPHONE (86-10) 5828-6300SUITES 3601 – 3606 & 3610
36/F, GLOUCESTER TOWER
THE LANDMARK
15 QUEEN'S ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

WRITER'S DIRECT DIAL NUMBER

(212) 373-3096

WRITER'S DIRECT FACSIMILE

(212) 492-0096

WRITER'S DIRECT E-MAIL ADDRESS

lvelazquez@paulweiss.com

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, UNITED KINGDOM
TELEPHONE (44 20) 7367 1600FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-05202001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

September 22, 2021

By ECFHonorable Ann Donnelly
United States District Court
Eastern District of New York
225 Cadman Plaza East, Courtroom 4G
Brooklyn, New York 11201*Does et al. v. Hochul et al.*, No. 1:21-cv-05067-AMD-TAM (E.D.N.Y.)

Dear Judge Donnelly:

We represent defendant New York-Presbyterian (“NYP”). Plaintiffs yesterday filed a motion asking the Court to set what they characterized as an expedited preliminary injunction briefing schedule (ECF 37). We are writing (i) to object to that request for the reasons below and (ii) to propose a briefing schedule consistent with the Court’s rules.

These are the reasons why plaintiffs’ request should be rejected:

First, there is no urgency to plaintiffs’ preliminary injunction motion because the rule they challenge already has been enjoined through at least October 12, 2021, and substantially identical issues are being briefed in a separate case in the Second

MATTHEW W. ABBOTT
EDWARD T. ABERMAN
JACOB A. ADLERSTEIN
JUSTIN ANDERSON
ALLAN J. ARFFA
JONATHAN B. ASHTOR
ROBERT A. ATKINS
SCOTT A. BARSHAY
PAUL M. BASTA
J. STEVEN BAUGHMAN
LYNN B. BAYARD
CRAIG A. BENSON
JOSEPH J. BIAL
BRUCE BIRNBERG
H. CHRISTOPHER BOEHNING
BRIAN BOLIN
ANGELO BONVINO
ROBERT A. BRITTON
DAVID W. BROWN
WALTER BROWN**
SUSANNA M. BUERGER
JESSICA S. CAREY
DAVID CARMONA
GEOFFREY R. CHEPIGA
ELLEN N. CHING
WILLIAM A. CLAREMAN
LEWIS R. CLAYTON
YAHONNES CLEARY
JAY COHEN
KELLEY A. CORNISH
CHRISTOPHER C. CUMMINGS
THOMAS V. DE LA BASTIDE III
MEREDITH DEARBORN**
ARIEL J. DECKELBAUM
KAREN L. DUDMAN
ALICE BELISLE EATON
ANDREW J. EHRlich
GREGORY A. EZRING
ROSS A. FIELDSTON
ANDREW C. FINCH
BRAD J. FINKELSTEIN
BRIAN P. FINNEGAN
ROBERTO FINZI
PETER E. FISCH
HARRIS FISCHMAN
ANDREW J. FOLEY
VICTORIA S. FORRESTER
HARRIS B. FREIDUS
CHRISTOPHER D. FREY
MANUEL S. FREY
ANDREW L. GAINES
KENNETH A. GALLO
MICHAEL E. GERTZMAN
ADAM M. GIVERTZ
SALVATORE GOGLIORMELLA
NEIL GOLDMAN
MATTHEW B. GOLDSTEIN
ROBERTO J. GONZALEZ*
CATHERINE L. GOODALL
CHARLES H. GOODE, JR.
ANDREW G. GORDON
BRIAN S. GRIEVE
UDI GROFMAN
NICHOLAS GROOMBRIDGE
BRUCE A. GUTENPLAN
MELINDA HAAG*
ALAN S. HALPERIN
CLAUDIA HAMMERMAN
BRIAN S. HERMANN
JOSHUA HILL
MICHELE HIRSHMAN
JARRETT R. HOFFMAN
ROBERT E. HOLOS
DAVID S. HUNTINGTON
AMRAN HUSSEIN
LORETTA A. IPPOLITO
WILLIAM A. ISAACSON*
JAREN JANGHORANI
BRIAN M. JANSON
JEH C. JOHNSON
BRAD S. KARP
PATRICK N. KARSNITZ
JOHN C. KENNEDY
BRIAN KIM
KYLE J. KIMPLER
ALEXIA D. KORBERG
ALAN W. KORNBERG

DANIEL J. KRAMER
JESSE KRAUSE
CAITH KUSHNER
DAVID K. LAKHDHIR
GREGORY F. LAUFER
BRIAN C. LAVIN
XIAOYU GREG LIU
RANDY LUSKEY**
LORETTA E. LYNCH
JEFFREY D. MARSHALL
MARCO V. MASOTTI
DAVID W. MAYO
ELIZABETH R. MCCOLM
JEAN M. MCLOUGHLIN
ALVARO MEMBRILLERA
MARK F. MENDELSON
CLAUDINE MEREDITH-GOUJON
WILLIAM D. MICHAEL
JUDIE NG SHORTELL*
CATHERINE NYARADY
JANE B. O'BRIEN
BRAD R. OKUN
LYNDSEY B. PARKS
ANDREW M. PARLEN
DANIELLE C. PENHALL
CHARLES J. PESANT
JESSICA A. PHILLIPS*
AUSTIN POLLET**
VALERIE E. RADWANER
JEFFREY J. RECHER
RICHARD A. REISNER
LORIN L. REISNER
JEANNIE S. RICE*
WALTER G. RICCIARDI
ANDREW N. ROSENBERG
JUSTIN ROSENBERG
JACQUELINE P. RUBIN
CHARLES F. SAMUELS
RAPHAEL M. RUSSO
ELIZABETH M. SACKSTEDER
JEFFREY D. SAFERSTEIN
JEFFREY B. SAMUELS
KENNETH M. SCHNEIDER
ROBERT B. SCHUMER
JOHN M. SCOTT
BRIAN SCRIVANI
KYLE T. SEIFRIED
KANNON K. SHANMUGAM*
CULLEN L. SINCLAIR
AUDRA J. SOLOWAY
SCOTT M. SONTAG
SARAH STASNY
TARUN M. STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
BRETTE TANNENBAUM
RICHARD C. TARLOWE
DAVID TARR
MONICA K. THURMOND
DANIEL J. TOAL
LAURA C. TURANO
CONRAD VAN LOGGERENBERG
KRISHNA VEERARAGHAVAN
JEREMY M. VEIT
LIZA M. VELAZQUEZ
MICHAEL VOGEL
RAMY J. WAHBEH
JOHN WEBER
LAWRENCE G. WEE
THEODORE V. WELLS, JR.
LINDSEY L. WIERSMA
STEVEN J. WILLIAMS
LAWRENCE I. WITDORCHIC
AUSTIN WITT
MARK B. WLAZLO
ADAM WOLLSTEIN
JULIA TARVER MASON WOOD
JENNIFER H. WU
BETTY YAP*
JORDAN E. YARETT
KAYE N. YOSHINO
TONG YU
TRACEY A. ZACCONE
TAURIE M. ZEITZER
T. ROBERT ZOCHOWSKI, JR.

*NOT ADMITTED TO THE NEW YORK BAR.
*ADMITTED ONLY TO THE CALIFORNIA BAR

Circuit. Plaintiffs’ motion seeks to enjoin enforcement of a mandate issued by the State Department of Health (“DOH”) requiring that all healthcare workers (other than those medically exempt) receive COVID-19 vaccinations to the extent that the mandate does not provide for religious exemptions. On September 14, in *Dr. A. v. Hochul*, No. 1:21-cv-1009 (N.D.N.Y.), Judge Hurd entered a state-wide temporary restraining order enjoining enforcement of the DOH rule insofar as it does not permit religious exemptions—exactly the same relief plaintiffs seek here. That order by its terms is in effect through October 12, 2021, and the parties will complete briefing today on a motion by the plaintiffs for a preliminary injunction. In a separate action, Judge Kuntz of this District denied a substantially identical motion for a temporary restraining order and preliminary injunction, and the parties are currently briefing a motion by the plaintiffs in the Second Circuit for an injunction pending appeal. *We the Patriots USA, Inc. v. Hochul*, No. 21-2179 (2d Cir.). That motion will be fully briefed by September 30, 2021.

In these circumstances, plaintiffs’ proposal—under which yet a third Court would be asked for the identical relief on an expedited basis—would potentially lead to conflicting rulings and would disserve judicial economy.

Second, there is no threat of irreparable harm. As NYP previously advised the Court, in light of the temporary restraining order issued by Judge Hurd, NYP paused enforcement of its vaccination program for all employees who previously had an approved or pending religious exemption request. *See* ECF 34, Ex. A. Moreover, as explained in NYP’s brief in opposition to plaintiffs’ temporary restraining order request (ECF 20), plaintiffs cannot demonstrate that irreparable harm will be caused by NYP absent injunctive relief, because any adverse employment action can be fully compensated by money damages. *Hyde v. KLS Pro. Advisors Grp., LLC*, 500 F. App’x 24, 25 (2d Cir. 2012). Thus, as Judge Komitee held in denying plaintiffs’ application for a temporary restraining order, “Plaintiffs have not established a likelihood that the private defendants will cause irreparable harm absent injunctive relief” because “loss of earnings does not constitute ‘irreparable harm’ in the employment context.” (ECF 35 at 3 n.2, quoting *Sampson v. Murray*, 415 U.S. 61, 90-92 (1974)). Likewise, just yesterday, Judge Swain in the Southern District of New York denied a TRO application by an NYP employee challenging NYP’s failure to exempt her from its COVID vaccination mandate for asserted medical and religious reasons on the ground that “Plaintiff’s allegation that she is threatened with the loss of employment is insufficient to carry her burden of showing irreparable harm because she makes no showing that the loss of her employment cannot be remedied with money damages.” *Buckley v. The New York and Presbyterian Hospital*, No. 1:21-cv-07864-UA (S.D.N.Y.) (ECF 6 at 2) (denying motion for TRO and certifying that any appeal from the order “would not be taken in good faith”).

Third, plaintiffs’ unexplained and unjustifiable delay in requesting an expedited briefing schedule contradicts their contention that an accelerated adjudication is necessary. By waiting a full week after the Court’s denial of a temporary restraining order to move for expedited briefing, plaintiffs inexplicably wasted time that they now

assert is indispensable. Their delay in filing the present motion follows an additional two-week delay in commencing this action after the enactment of the DOH mandate, further highlighting their lack of dispatch and the lack of any urgency here. Notably, plaintiffs did not contact NYP before filing their motion for expedited briefing to attempt to reach agreement on a schedule. Nor have they have even proposed a briefing schedule for the Court to consider.

Under these circumstances, and in the absence of any persuasive showing by plaintiffs to the contrary, NYP submits that briefing should proceed in accordance with this Court's standard briefing schedule for preliminary injunction motions. *See* Local Civ. R. 6.1(b). We therefore propose an October 5 deadline for defendants' opposition and an October 12 deadline for plaintiffs' reply, and that a hearing be scheduled at the Court's convenience thereafter. In accordance with the Court's rules governing motion practice, NYP also intends to submit a pre-motion letter requesting permission to move to dismiss plaintiffs' claims against it.

We thank the Court for its attention and stand ready to answer any questions.

Respectfully,

/s/ Liza M. Velazquez

Liza M. Velazquez

cc: All counsel by ECF